

OCT 31 2012

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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION

|                             |   |                                     |
|-----------------------------|---|-------------------------------------|
| <b>KELVIN A. CANADA,</b>    | ) | <b>Civil Action No. 7:11cv00569</b> |
| <b>Plaintiff,</b>           | ) |                                     |
|                             | ) | <b>ORDER ADOPTING REPORT</b>        |
| <b>v.</b>                   | ) | <b>AND RECOMMENDATION</b>           |
|                             | ) |                                     |
| <b>WALTER DAVIS et al.,</b> | ) | <b>By: Samuel G. Wilson</b>         |
| <b>Defendants.</b>          | ) | <b>United States District Judge</b> |

Kelvin Canada, a Virginia inmate proceeding *pro se*, brings this action pursuant to 42 U.S.C. § 1983 against a number of Red Onion State Prison employees, alleging variously that the defendants used excessive force against him, failed to protect him, and displayed deliberate indifference to his medical needs. Canada seeks damages as well as declaratory and injunctive relief. Three of the defendants, Dr. Timothy McBride, Nurse Vicki Phipps, and Nurse Melanie Scott (the “healthcare workers”), have filed a Rule 12(b)(6) motion to dismiss Canada’s complaint for failing to state a claim on which relief can be granted. And four of the defendants, Officer Walter Davis, Sergeant Paul Payne, Captain Dewayne Turner, and Sergeant William Wright (the “correctional workers”), have filed a motion for summary judgment in which they assert that there are no material issues of fact, entitling them to judgment as a matter of law. The court has referred the matter to United States Magistrate Judge Pamela M. Sargent for a Report and Recommendation pursuant to 28 U.S.C. § 636(b)(1)(B).

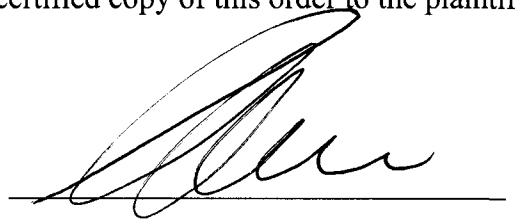
The Magistrate Judge has filed a report finding that (1) Canada’s complaint fails to state a claim against the healthcare workers, (2) there are no disputes of material fact on Canada’s claims of deliberate indifference to medical needs against the correctional workers, and (3) there is no basis for ordering injunctive relief. The Magistrate Judge therefore recommended granting

the healthcare workers' motion to dismiss and the correctional workers' motion for summary judgment with respect to Canada's deliberate indifference to medical needs and injunctive relief claims. However, Magistrate Judge Sargent found questions of fact underlying Canada's remaining allegations against the correctional workers and recommended that the court deny the balance of their motion for summary judgment.

No party has objected to the Magistrate's Report and Recommendation. "[I]n the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005). The court is satisfied that there is no clear error on the face of the record. Accordingly, it is hereby **ORDERED** and **ADJUDGED** that the Magistrate Judge's Report and Recommendation is **ADOPTED** in its entirety, the healthcare workers' motion to dismiss (ECF No. 20) is **GRANTED**, the correctional workers' motion for summary judgment (ECF No. 32) is **GRANTED** with respect to Canada's claims of deliberate indifference to medical needs and for injunctive relief, and the correctional workers' motion for summary judgment is **DENIED** in all other respects.

The Clerk of the Court is directed to send a certified copy of this order to the plaintiff.

**ENTER:** October 31, 2012.



UNITED STATES DISTRICT JUDGE